

## EXHIBIT 5

Volume I  
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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 03-10574-JLT

- - - - - x

EVGENY OKMYANSKY,  
Plaintiff,

V.  
HERBALIFE INTERNATIONAL OF  
AMERICA, INC.,  
Defendant.

- - - - - x

DEPOSITION OF EVGENY OKMYANSKY, a  
witness called on behalf of the Defendant taken  
pursuant to the Federal Rules of Civil Procedure,  
before MaryJo O'Connor, Registered Professional  
Reporter/Certified Shorthand Reporter and Notary  
Public in and for the Commonwealth of Massachusetts,  
at the Offices of Greenberg Traurig, LLP, One  
International Place, Boston, Massachusetts, on  
Monday, March 29, 2004, commencing at 10:05 p.m.

- - - - -

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I N D E X

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1 Q. I believe the question is did you recently move from  
2 Canada to Russia?

3 A. I live in two countries now, both in Canada and in  
4 Russia.

5 Q. Can you give me your Canadian address?

6 A. It's 103 Old Surrey Lane, Richmond Mill --

7 THE WITNESS: Richmond Hill.

8 A. I'm sorry. Richmond Hill, Ontario.

9 Q. How often do you spend at your Moscow address this  
10 year so far?

11 A. It was half in Canada and half in Moscow. Half time  
12 in Canada, half time in Moscow.

13 Q. Where did you come from to attend your deposition  
14 here in Boston today?

15 A. From Toronto in Canada.

16 Q. Do you also have a residence in Toronto?

17 A. Yes.

18 Q. What is your date of birth?

19 A. July 4, 1952.

20 Q. Of what country are you a citizen?

21 A. Israel.

22 Q. Are you a citizen of any other countries?

23 A. Russia.

24 Q. Are you a citizen of any other countries?

1 THE WITNESS: No.

2 A. No, she's not active in this. She's a housewife.

3 Q. Mr. Okmyansky, do you speak English at all?

4 A. Not really well.

5 Q. Can you write in English?

6 A. Not well. Just a little.

7 Q. And do you understand English when it's spoken to  
8 you?

9 A. Only with regard to Herbalife. I understand  
10 everything with regard to Herbalife, because I have  
11 been in this business for 12 years. I can  
12 understand any language.

13 Q. Are you currently employed?

14 A. I am a full-time distributor.

15 Q. For Herbalife?

16 A. Yes.

17 Q. Are you employed with any other business other than  
18 as a full-time distributor with Herbalife?

19 A. No, it's 100 percent Herbalife.

20 Q. Did you graduate from what the American equivalent  
21 is of high school?

22 A. Yes. Not in American, in Russia.

23 Q. And what year was that?

24 A. I graduated from a college in '74, must have been



1           that either.

2       A.     Since '95 when I came to live in Massachusetts, all  
3           the checks that I get come to me in dollars and  
4           there is no ambiguity about it.

5                   MR. BESPALKO: I don't think that was  
6           the answer. The answer was that there is no  
7           separation on the checks where they come from.

8                   THE TRANSLATOR: There is no separation,  
9           that's right. That's the word that he used.

10                   MS. SANKARAN: Okay. Can I just ask  
11           that you try to translate as literally as you can  
12           what he's saying.

13                   THE TRANSLATOR: Okay.

14       Q.     Do you know how much of your income comes from sales  
15           in Massachusetts?

16       A.     No, I can't say exactly.

17       Q.     Can you give an approximation without guessing?

18       A.     I can't say because I do not get my bonus from the  
19           sales that I do but from the sales that I get from  
20           people I recruited. The way Herbalife operates is  
21           different from other companies.

22       Q.     Prior to 1992, where were you employed?

23       A.     We immigrated to Israel in 1990 and we gathered  
24           oranges in Israel.

1 Q. Were you working as an engineer still?

2 A. Yes, I was still engineer.

3 Q. And how long were you at that company?

4 A. From '74 when I graduated.

5 Q. And what was the name of that company?

6 A. Construction Company Number 4, Metrostroi,  
7 M-e-t-r-o-s-t-r-o-i.

8 Q. Prior to 1974 were you employed?

9 A. No. I was a college student.

10 Q. How did you come to work at Herbalife?

11 A. I read in a paper that the company was recruiting  
12 people with energy, and I heard that it was an  
13 American company and I was tempted to join.

14 Q. Did you know anyone working for Herbalife prior to  
15 the time you joined?

16 A. When I came to attend the first presentation, I  
17 didn't even know the name.

18 Q. What made you decide to join?

19 A. I was told that it was a company that had great  
20 prospects; that it was an American company, and that  
21 I could work the world over. And I realized that I  
22 could help many people to find employment and to  
23 work as independent contractors, independent  
24 distributors, and to reach a better health.

1 A. Yes.

2 Q. And when did you sign it?

3 A. When we put the contract together.

4 Q. And when was that?

5 A. It was in July 21, 1992.

6 Q. And where were you when you signed this document?

7 A. In Israel.

8 Q. Did you have any discussions with anyone at  
9 Herbalife regarding signing this document prior to  
10 the time you signed it?

11 A. Yes.

12 Q. And who did you have conversations with?

13 A. Elena Brodsky, Alexander Semionov.

14 Q. And who is Elena Brodsky?

15 A. She was my supervisor at the time.

16 Q. Is she a distributor or is she --

17 A. A distributor, yes.

18 Q. Did you speak with -- I'm sorry. Mr. Semionov, is  
19 he a distributor?

20 A. Yes.

21 Q. Did you speak with anyone who was not an independent  
22 distributor at Herbalife prior to the time you  
23 signed this document?

24 A. Not about this document.

1 people. I don't remember their names now. The  
2 people at the meeting said that they got checks from  
3 this company; that this was an American company and  
4 it worked around the world and I was interested in  
5 that.

6 Q. Was anyone from Herbalife from the United States  
7 present at that meeting?

8 A. No.

9 MR. EIGERMAN: I have 11. Can we take a  
10 two-minute or a five-minute break?

11 MS. SANKARAN: Sure, that's a good  
12 place to stop. We'll take a few minute break and  
13 come back.

14 (Brief recess.)

15 Q. When you signed the document we've marked as Exhibit  
16 2, what did you understand your job to be?

17 A. I thought that I would spread the ideas of good  
18 eating habits around the world, and I also thought  
19 that I would help other immigrants like myself to  
20 earn their living in different countries of the  
21 world. I also thought that the company would  
22 compensate me for reaching other people and for  
23 showing them the ways to earn their living, to work.

24 Q. And how did you understand you would be compensated?

1 A. The handbook that was attached to the contract  
2 described the way of compensation, and it explained  
3 that I would earn a percentage for recruiting the  
4 people that would be working for the company, and I  
5 would also get a percentage for those people who  
6 would be recruited by the people I initially  
7 recruited.

8 Q. What language was the handbook in that was attached  
9 to the contract?

10 A. The book was in Hebrew, but the presentation was in  
11 Russian and the illustrations were quite clear. I  
12 understood them all. And I also saw the checks that  
13 the people got in American dollars, and in the  
14 description I saw that the company had branches in  
15 different countries of the world and Australia, in  
16 Canada, in Britain.

17 Q. When did you see the checks that people had  
18 received?

19 A. At the first meeting. I saw the people with checks  
20 for \$5,000 and \$10,000 and they showed them.

21 Q. And who showed the checks?

22 A. Leon Waisbein, Emilia Waisbein, and there were other  
23 people, but I do not remember them.

24 Q. When you started working as a distributor, where did

1           you do your work?

2       A.    It was first in Israel, and then I moved to Russia  
3           when I started doing this job because it's my native  
4           country.

5       Q.    When did you move to Russia?

6       A.    In 1992.

7       Q.    And how long did you live there?

8       A.    Three years until 1995.

9       Q.    From 1992 to 1995 were you doing your work in  
10           Russia?

11      A.    Mainly, yes.

12      Q.    Anywhere else in that time frame?

13      A.    In Israel.

14      Q.    And after 1995 where did you do your work?

15      A.    I moved to Boston and I worked here. First we  
16           rented and then we bought a large house.

17      Q.    When you were first working for Herbalife from  
18           1992 -- strike that.

19                               How long did you work in Israel  
20           after you just started as a distributor for  
21           Herbalife?

22      A.    I can't say exactly because I moved to and forth  
23           Israel Russia, so I was always in between Russia and  
24           Israel.

1 Eigerman and Attorney Bespalko.)

2 MR. EIGERMAN: I'm going to direct the  
3 witness not to answer that question.

4 MS. SANKARAN: It's not a privileged  
5 communication, then what's your grounds?

6 MR. EIGERMAN: I would think the ground  
7 is self-evident. If nothing else, he has a fifth  
8 amendment right.

9 MS. SANKARAN: Okay, if that's the  
10 reason, that's fine.

11 MR. EIGERMAN: It's possible.

12 MS. SANKARAN: For the record, I believe  
13 Mr. Eigerman has instructed the witness not to  
14 answer and has indicated that perhaps there is a  
15 fifth amendment reason for that.

16 Q. When did you move from Boston?

17 A. In January 2003.

18 Q. And where did you move when you moved in January  
19 2003?

20 A. To Canada.

21 Q. And where were you primarily doing your work for  
22 Herbalife when you moved to Canada?

23 A. In Montreal then in Toronto.

24 Q. With respect to -- strike that.

1 International of America.

2 Q. And if I call Herbalife International -- well,  
3 strike that.

4 In the next questions I'm going to  
5 ask you, I'm going to refer to Herbalife  
6 International of America, Inc., as the defendant; is  
7 that okay?

8 A. Yes.

9 Q. At the time you signed the document that is Exhibit  
10 2 in front of you, did you know if the defendant had  
11 any offices in Israel?

12 A. Yes.

13 Q. And do you remember where those offices were located  
14 in Israel at that time?

15 A. One was in Halon.

16 Q. At the time that you signed the document that is  
17 Exhibit 2 in front of you, did you know if the  
18 defendant had any offices in Russia?

19 A. No, I didn't know.

20 Q. Did you know at the time that you signed Exhibit 2  
21 whether the defendant had any offices in the United  
22 States?

23 A. Yes. That was the only reason I signed it.

24 MR. EIGERMAN: I'm sorry?



1 MS. SANKARAN: You know, that's a bad  
2 question. I'm going to withdraw it now that you  
3 read it back.

4 Q. \* Which people on Exhibit 3 Part B did you learn in  
5 1994 had signed separate distribution agreements  
6 with other sponsors?

7 A. I can't give you any dates and names now. It all  
8 took place in 1994.

9 MR. BESPALKO: The way he answered was  
10 he couldn't, indeed he couldn't give you the names  
11 and dates. It all happened in 1994 and 1995.

12 THE TRANSLATOR: '95.

13 MR. BESPALKO: 1994 and 1995. We can  
14 ask it again.

15 THE TRANSLATOR: Okay.

16 MR. BESPALKO: So do you want to do that  
17 again so that you're clear on the record.

18 MS. SANKARAN: Okay, can you read back  
19 my last question and then you can translate it from  
20 what is written.

21 \*(Question read.)

22 A. I remember it was very recently in '94, and other  
23 people it could be in '94 and '95.

24 Q. Do you recognize this document I've just given you?

1 A. Yes.

2 Q. Did you write this letter?

3 A. Yes.

4 Q. Did anyone help you translate this letter?

5 A. Yes.

6 Q. Who helped you translate the letter?

7 A. I don't remember now.

8 Q. Did you ever write a draft of this letter in  
9 English?

10 A. I wrote it in Russian. It was translated for me to  
11 English.

12 Q. What is the date on this letter?

13 A. July 30, 1997.

14 Q. And is that your signature on the letter?

15 A. Yes.

16 MS. SANKARAN: Can we mark that as the  
17 next exhibit.

18 (Document marked for identification  
19 as Okmyansky Exhibit 6.)

20 Q. Did you receive a decision on the case for  
21 Mantsova Ludmila on February 11, 1994?

22 A. The decision was taken on February 11, 1994, but I  
23 receive it much later.

24 Q. When did you receive the decision?

1 A. About six months later. It took so long for mail to  
2 reach Russia at that time.

3 Q. And did you learn that the case was closed?

4 A. Their organization was back, given back to me.

5 Q. I'm going to -- I mean I'm -- go off the record.

6 (Discussion off the record.)

7 Q. I'm going to read a sentence from the third  
8 paragraph, "Now I have been informed that the case  
9 is closed." Did I read that correctly?

10 MR. BESPALKO: You've read it correctly,  
11 I'm sorry, but the translation was not equal to what  
12 you have read. The translation went: And now I  
13 have received a letter that the case is closed, when  
14 the sentence says and now I was informed.

15 (Whereupon the translator  
16 translates to the witness.)

17 A. Yes.

18 Q. When did you learn that the case was closed?

19 A. In 1997 and then I wrote a letter, and I contacted  
20 the office of the department many times.

21 Q. Did you learn that the case was closed before July  
22 30, 1997?

23 A. Yes.

24 Q. How soon before July 30, 1997 did you learn that the

1 case was closed?

2 A. I don't remember exactly.

3 Q. Was it several weeks?

4 A. Perhaps several months.

5 MR. EIGERMAN: Has this been marked?

6 MS. SANKARAN: Yes.

7 MR. BESPALKO: 6.

8 Q. Do you agree that you --

9 MR. EIGERMAN: One second please.

10 MS. SANKARAN: I'm sorry.

11 (Conference between Attorney  
12 Eigerman and Attorney Bespalko.)

13 Q. Do you agree that you received a decision about the  
14 case of Mantsysova Ludmila before July 30, 1997?

15 MR. EIGERMAN: I object. First of all,  
16 he's already answered that. Secondly, isn't this  
17 beyond the scope of our discovery in this phase?

18 This phase, as I understand it, is  
19 to determine what choice of law and what venue is  
20 appropriate, whether it's for or not convenience,  
21 but this would seem to me to be once we've chosen  
22 the law, decided what statute of limitations apply.  
23 This seems to be going to whether or not this is  
24 within it or without it. I don't think that's

1           within the scope, is it?

2                       MS. SANKARAN:    I believe that within  
3           the choice of law provisions is the statute of  
4           limitations issue and that it was always  
5           contemplated by the parties, and I could be wrong  
6           about this, that maybe we didn't have an  
7           understanding; but I always understood that when we  
8           were going to brief things at the end of this, we  
9           could be briefing statute of limitations. That was  
10          the whole point. And I believe we discussed that  
11          before Judge Tauro when we appeared for the Rule 16  
12          conference.

13                   MR. EIGERMAN:    I wasn't there but.

14                   MR. BESPALKO:   We have an award. Do we  
15          have a copies? Should we go off the record for two  
16          minutes and take a look at it? Because that was my  
17          impression, that we would choose the law and that we  
18          would choose the forum, and we would go from there.

19                   MS. SANKARAN:   My impression was that we  
20          told the judge that we would be possibly moving,  
21          filing a motion with respect to venue or filing a  
22          summary judgment motion, because perhaps the claims  
23          would be barred by the statute of limitations.

24                   MR. BESPALKO:   Sure, but my question is

1 we had a paper that was a proposed joint statement  
2 and whatever, and it was endorsed by the Court by  
3 the order. Now, that paper is somewhere within the  
4 file within walking distance from here. Why don't  
5 we suspend for two minutes and take a look at the  
6 paper?

7 MS. SANKARAN: Okay.

8 MR. EIGERMAN: Maybe that will answer  
9 the question, maybe it won't.

10 MS. SANKARAN: It probably won't because  
11 Judge Tauro's orders are never all that specific.

12 Okay. We're going to suspend for a  
13 few minutes and I'm going to check the order.

14 MR. BESPALCO: If you're right, you're  
15 right; and if you're not, you're not.

16 (Discussion off the record.)

17 (Brief recess.)

18 MS. SANKARAN: Back on.

19 Q. Have you ever seen this document before?

20 A. This is my letter.

21 Q. Did you write this letter?

22 A. I wrote it in Russian. It was translated for me.

23 Q. And who translated it?

24 A. I don't remember.

1 Q. Did you believe -- strike that.

2 Who is Mark?

3 A. Mark is president and the founder of the company.

4 Q. Did you send this letter to Mark?

5 A. Yes.

6 Q. When you sent this letter, did you believe that this  
7 was a correct translation of your Russian letter?

8 A. Yes.

9 MR. EIGERMAN: How could he possibly  
10 know that?

11 MS. SANKARAN: I'm asking what he  
12 believed.

13 MR. EIGERMAN: Well, okay, he hoped.

14 Q. Was there a decision rendered on the case of Ludmila  
15 Mantysyova as of December 2, 1994?

16 A. What is the decision that was taken? What does it  
17 mean decision taken?

18 Q. I'll rephrase the question. Did you receive a  
19 decision on the case of Ludmila Mantysyova dated  
20 December 2, 1994?

21 A. Yes.

22 MS. SANKARAN: Can you mark that as the  
23 next exhibit.

24

1 (Document marked for identification  
2 as Okmyansky Exhibit 7.)

3 Q. Do you know who Valentina Muronov is?

4 A. Yes.

5 Q. And who is that?

6 A. A member of my organization.

7 Q. Do you recognize this letter that I've just given  
8 you?

9 A. Yes.

10 Q. Did you receive a copy of this letter?

11 A. Yes.

12 Q. And did you receive it near October 30, 1997?

13 A. With a short delay, yes.

14 Q. Did someone translate this letter for you?

15 A. Yes.

16 Q. Who translated it?

17 A. I don't remember.

18 MR. EIGERMAN: I'm sorry?

19 THE TRANSLATOR: I don't remember.

20 Q. Do you believe that the translation was a correct  
21 translation?

22 A. Yes.

23 MS. SANKARAN: Can you mark that as the  
24 next exhibit.



1 (Document marked for identification  
2 as Okmyansky Exhibit 8.)

3 Q. Have you ever seen this letter before?

4 A. Yes.

5 Q. Did you receive a copy of this letter?

6 A. Yes.

7 Q. Did you receive it near October 30, 1997?

8 A. Yes.

9 Q. Did someone translate this letter to Russian for  
10 you?

11 A. Yes.

12 Q. Do you believe that that was a correct translation  
13 that you received?

14 A. Yes.

15 MS. SANKARAN: Can we mark that as the  
16 next exhibit.

17 (Document marked for identification  
18 as Okmyansky Exhibit 9.)

19 Q. Have you ever seen this document before?

20 A. Yes.

21 Q. Did you receive a copy of this letter?

22 A. Yes.

23 Q. Did you receive it near October 30, 1997?

24 A. Yes.

1 Q. Did someone translate this letter for you into  
2 Russian?

3 A. Yes.

4 Q. Did you understand the letter when it was translated  
5 for you?

6 A. Yes.

7 Q. Did you believe it to be a correct translation?

8 A. Yes.

9 MS. SANKARAN: Can I mark it as the  
10 next exhibit, please.

11 (Document marked for identification  
12 as Okmyansky Exhibit 10.)

13 Q. Have you seen this letter before?

14 A. Yes.

15 Q. Have you seen the attachment to the letter?

16 A. Yes..

17 Q. Did you receive this letter near December 23, 1997?

18 A. Yes.

19 Q. Did someone translate this letter for you into  
20 Russian?

21 A. Yes.

22 Q. Did you understand the translation?

23 A. Yes.

24 Q. And was the attachment translated for you in

1 Russian?

2 A. Yes.

3 Q. And did you understand the translation of the  
4 attachment?

5 A. Yes. Absolutely.

6 Q. Did you believe that the translation of these two  
7 pages was accurate?

8 A. Yes.

9 MS. SANKARAN: Mark that as the next  
10 exhibit, please.

11 (Document marked for identification  
12 as Okmyansky Exhibit 11.)

13 Q. Have you seen this letter before?

14 A. Yes.

15 Q. Did you receive this letter near January 12, 1998?

16 A. Yes.

17 Q. Did someone translate this letter for you into  
18 Russian?

19 A. Yes.

20 Q. Did you understand the translation?

21 A. Can I ask the translation, because I don't remember  
22 the content of one of the passages here.

23 Q. Sure.

24 MS. SANKARAN: If since a question isn't

1 pending, if you want to go out and talk to him and  
2 translate for him, that's fine.

3 MR. BESPALKO: No, I think the question  
4 was whether at the time when he got this letter and  
5 someone translated it for him, he believed the  
6 translation to be accurate. That was the question I  
7 believe.

8 MS. SANKARAN: I don't know whether it  
9 was that or that he understood it, but I mean if he  
10 wants you to translate it, I have no problem with  
11 that. If he doesn't remember what it is and he  
12 wants his memory refreshed, I have no problem if you  
13 guys want to go talk about the letter.

14 MR. BESPALKO: No, but I mean are you  
15 going to go into the content of the letter in great  
16 detail ?

17 MS. SANKARAN: No.

18 MR. BESPALKO: No, so I think this is  
19 not the question. I don't think he needs it now.  
20 He can answer whether at the time when he received  
21 it and somebody translated it and he believed that  
22 translation to be accurate so that he fully  
23 understood what the letter was about.

24 MR. EIGERMAN: At that time.

1 MR. BESPALKO: Yes, at that time. Sure,  
2 he can answer that.

3 MS. SANKARAN: Okay.

4 MR. BESPALKO: If we could just  
5 translate it again.

6 MS. SANKARAN: I'll just ask the  
7 question again just to keep the record kind of neat.

8 Q. When you received this letter, did someone translate  
9 it for you into Russian?

10 A. Yes.

11 Q. Do you remember who translated it?

12 A. I don't remember.

13 Q. Did you understand it when the letter was  
14 translated?

15 A. Yes.

16 Q. And did you believe that the translation was an  
17 accurate translation?

18 A. Yes.

19 MS. SANKARAN: Mark that as the next  
20 exhibit.

21 (Document marked for identification  
22 as Okmyansky Exhibit 12.)

23 Q. Have you seen this letter with the attachment  
24 before?

1 A. Yes. It's the same case.

2 Q. Did you receive this letter near January 26, 1998?

3 A. Yes.

4 Q. Did someone translate this letter and attachment for  
5 you to Russian?

6 A. Yes.

7 Q. Did you understand the translation?

8 A. Yes.

9 Q. Did you believe the translation was accurate?

10 A. Yes.

11 MS. SANKARAN: Mark it as the next  
12 exhibit.

13 (Document marked for identification  
14 as Okmyansky Exhibit 13.)

15 Q. Did you ever receive this letter and the attachment?

16 A. Yes.

17 Q. Did you receive it near April 1, 1998?

18 A. With some delay.

19 Q. How much of a delay?

20 A. Perhaps a month.

21 MR. EIGERMAN: What did he say?

22 MS. SANKARAN: Perhaps a month.

23 MR. EIGERMAN: That's quite a delay.

24 MS. SANKARAN: From Los Angeles to

1 Framingham, it sure is.

2 Can you translate that, please.

3 (Whereupon the translator  
4 complies.)

5 A. We had vacation in April.

6 Q. Did someone translate this letter for you when you  
7 received it?

8 A. Yes.

9 Q. Do you know who translated it?

10 A. I don't remember.

11 Q. Did you understand the translation?

12 A. Yes, I understood the translation and I was shocked.

13 Q. Did you believe the translation was correct?

14 A. Yes.

15 Q. Is this your handwriting on the second page?

16 A. Yes, I wrote this.

17 Q. Did you ever send this letter with the handwriting  
18 to anyone?

19 A. Yes.

20 Q. And who did you send it to?

21 A. To my sponsor Emilia and to Leon Waisbein.

22 Q. Did you send it to anyone else?

23 A. Also wrote to the company, to Ludmila Fedorovtseva,  
24 and to her manager.

1 Q. You sent the second page with this handwriting to  
2 Ludmila Fedorovtseva?

3 A. Yes.

4 Q. Did you receive a response back?

5 A. Yes.

6 MS. SANKARAN: Can we mark that as the  
7 next exhibit, please.

8 (Document marked for identification  
9 as Okmyansky Exhibit 14.)

10 Q. Did you ever receive this letter I've just given  
11 you?

12 THE WITNESS: Yes, I have received it.

13 A. Yes.

14 Q. Did you receive it near May 4, 1998?

15 THE WITNESS: Yes.

16 A. Yes.

17 Q. Did someone translate it to Russian for you when you  
18 received it?

19 A. Yes.

20 Q. Did you understand the translation?

21 A. Yes.

22 Q. Did you believe that the translation was accurate?

23 A. Yes.

24 MS. SANKARAN: Can you mark that as the



1 next exhibit.

2 (Document marked for identification  
3 as Okmyansky Exhibit 15.)

4 Q. Let me show you a document. Who is Iren V.  
5 Novoroussova?

6 A. Iren Novoroussova, it's my distributor.

7 Q. Is this person someone you claim you are owed  
8 commissions for?

9 THE WITNESS: Yes, we talked about it.

10 A. Yes, we talked about him.

11 Q. Did you receive a copy of this letter?

12 A. Yes.

13 Q. It's addressed to your son, though, correct?

14 A. I got a copy of it.

15 Q. Did you get a copy of it near July 30, 1998?

16 A. Yes.

17 Q. Did someone translate the letter and the attachment  
18 for you when you received it?

19 A. Yes.

20 Q. Did you understand the translation?

21 THE WITNESS: I understand the whole  
22 letter because it's all the same. Yes.

23 A. Yes.

24 Q. Did you believe the translation was correct?

1 A. Yes.

2 MS. SANKARAN: Can you mark that as the  
3 next exhibit, please.

4 (Document marked for identification  
5 as Okmyansky Exhibit 16.)

6 Q. Did you receive a copy of this letter and  
7 attachment?

8 A. Yes.

9 Q. Did you receive it near August 4, 1998?

10 A. Yes.

11 Q. Did someone translate this letter and the attachment  
12 for you when you received?

13 A. Yes.

14 Q. Who translated it for you?

15 A. I don't remember.

16 Q. Did you understand the translation?

17 A. Yes.

18 Q. Did you believe the translation was accurate?

19 A. Yes.

20 MS. SANKARAN: Okay. Mark that as the  
21 next exhibit.

22 (Document marked for identification  
23 as Okmyansky Exhibit 17.)

24 Q. Did you know as of August 4, 1998 a decision had

1           been made in the case of Michail Archavski?

2       A.     Yes.

3       Q.     Do you recognize this letter?

4       A.     Yes.

5       Q.     This relates to your son's downline; is that  
6           correct?

7       A.     Yes.

8       Q.     Do any of the cases referenced in this letter relate  
9           to your downline?

10      A.     All of them.

11      Q.     Did your son show you -- strike that.

12                               Did your son send this letter to  
13      Carol Hanna?

14      A.     Yes, it's his signature.

15      Q.     Did he show you this letter before he sent it?

16      A.     Yes.

17      Q.     Did he translate it to Russian for you before he  
18           sent it?

19      A.     Yes.

20      Q.     Did you understand the translation?

21      A.     Yes.

22      Q.     Did you believe the translation was accurate?

23      A.     Yes.

24      Q.     Did he discuss with you the contents of this letter

1 before he wrote it?

2 A. Yes, we wrote it together.

3 MS. SANKARAN: Can you mark that as the  
4 next exhibit.

5 (Document marked for identification  
6 as Okmyansky Exhibit 18.)

7 MS. SANKARAN: Just off the record for  
8 a second.

9 (Discussion off the record.)

10 MS. SANKARAN: Back on the record.

11 Q. Can you look at Exhibit 16. As of July 30, 1998 --  
12 strike that.

13 Near July 30, 1998 did you know a  
14 decision had been made in the case of Valery  
15 Novorussov?

16 A. Yes. I got this letter and I read it, yes.

17 Q. Exhibit 15, near May 4, 1999, did you know a  
18 decision had been made in the case of Veraskina?

19 MR. EIGERMAN: If one had been.

20 A. Yes.

21 Q. Exhibit 14. As of April 1, 1998, did you know a  
22 decision had been made in the case of Valentina  
23 Borisova?

24 A. Yes. I already said so.

1 Q. Can you look at Exhibit 13, please.

2 A. (Whereupon the witness complies.)

3 Q. As of January 26, 1998, did you know a decision had  
4 been made in the case of Tatiana Veraskina?

5 A. Yes.

6 Q. Can you look at Exhibit 12.

7 A. (Whereupon the witness complies.)

8 Q. As of January 12, 1998 did you know a decision had  
9 been made with respect to the cases Svetlana  
10 Sokolova?

11 A. Yes.

12 Q. Will you look at Exhibit 11.

13 A. (Whereupon the witness complies.)

14 Q. As of December 23, 1997, did you know a case had  
15 been -- sorry -- a decision had been made in the  
16 case of Tatiana Veraskina?

17 A. Yes.

18 Q. Can you look at Exhibit 10?

19 A. (Whereupon the witness complies.)

20 Q. As of October 30, 1997 did you know a decision had  
21 been made in the case of Olga Muzalova?

22 A. Yes.

23 Q. Can you look at Exhibit 9.

24 A. (Whereupon the witness complies.)

1 Q. As of October 30, 1997 did you know a decision had  
2 been made in the case of Kamil Ishkinyaev?

3 A. Yes.

4 Q. And Exhibit 8, as of October 30th or near October  
5 30th, did you know that a decision had been made in  
6 the case of Valentina Muronov?

7 A. Yes.

8 Q. Did you receive a copy of this letter?

9 A. Yes.

10 Q. Did you receive it near February 9, 1999?

11 A. Yes.

12 Q. Did someone translate it for you when you received  
13 it?

14 A. Yes.

15 Q. Did you understand the translation?

16 A. Yes.

17 Q. Do you know who translated it?

18 A. I don't remember.

19 Q. Did you believe the translation was correct?

20 A. Yes.

21 MS. SANKARAN: Can you mark that as the  
22 next exhibit.

23 (Document marked for identification  
24 as Okmyansky Exhibit 19.)

1 Q. Have you seen this document before?

2 A. Yes.

3 Q. Did you send this letter?

4 A. Yes.

5 Q. Who wrote this letter?

6 A. I wrote it in Russian.

7 Q. Who translated it to English?

8 A. I don't remember.

9 Q. Did you believe that the translation was correct?

10 A. Yes.

11 Q. And you faxed this letter?

12 A. Yes.

13 Q. Is that your signature on the last page?

14 A. Yes, it's my signature.

15 MS. SANKARAN: Can you mark that as the  
16 next exhibit.

17 (Document marked for identification  
18 as Okmyansky Exhibit 20.)

19 Q. Have you seen this document before?

20 THE WITNESS: Yes, of course.

21 A. Yes, of course.

22 Q. Did you write this letter?

23 A. Yes.

24 Q. Did you write it in English?

1 A. No, in Russian.

2 Q. Who translated it?

3 A. I don't remember.

4 Q. Do you believe the translation is correct?

5 A. Yes.

6 Q. Who did you send this to?

7 A. To the ethical department, department of ethics of  
8 Herbalife International in Los Angeles, the  
9 headquarters.

10 MS. SANKARAN: Can you mark that as the  
11 next exhibit.

12 (Document marked for identification  
13 as Okmyansky Exhibit 21.)

14 Q. Have you ever seen this letter before?

15 A. Yes.

16 Q. Did you receive a copy of it near July 18, 1997?

17 A. Yes.

18 Q. Who gave you a copy of this letter?

19 A. It was mailed to me.

20 Q. Who mailed it to you?

21 A. As usual, Herbalife, like the rest of them.

22 Q. The letter is addressed to Elena Kadisheva, correct?

23 A. I got a copy.

24 Q. Did Elena give you a copy?



1 A. No.

2 Q. Did you submit anything to Herbalife with respect to  
3 Elena Kadisheva in writing?

4 A. I don't remember.

5 MS. SANKARAN: Can you mark that as the  
6 next exhibit.

7 (Document marked for identification  
8 as Okmyansky Exhibit 22.)

9 Q. Have you ever seen this letter before?

10 A. Not the same, this very letter, but the copy that  
11 was addressed to me.

12 Q. But you've never seen this letter before?

13 A. It was identical with the exception of the name on  
14 the first line which was Evgeny Okmyansky.

15 MR. BESPALKO: Well, we have cover  
16 letters that usually enclose different letters to  
17 different people. I presume that's the answer and  
18 we can stipulate to that. I mean I presume it came  
19 from us.

20 MS. SANKARAN: Yes, you guys produced  
21 it, so I'm assuming.

22 MR. BESPALKO: So if you look at the  
23 previous exhibits, whatever they were, some of them  
24 have cover letters and identical letters which are

1 addressed to the actual people. So I would presume  
2 that this was the same story, and we will stipulate  
3 to that.

4 A. All the letters are sent to two addresses, to them  
5 and to me.

6 Q. Did you submit anything in writing to Herbalife with  
7 respect to Mikhail Gorbатов?

8 A. Yes.

9 Q. Did you ever receive a response from Herbalife?

10 A. Yes, this was a response.

11 MS. SANKARAN: Can you mark that as the  
12 next exhibit.

13 (Document marked for identification  
14 as Okmyansky Exhibit 23.)

15 Q. Have you ever seen this letter before?

16 A. Yes, a similar one was addressed to me.

17 MS. SANKARAN: And to the extent that you  
18 have a similar one that is addressed to him that  
19 hasn't been produced, I just ask that it be produced  
20 to the extent that you have it.

21 MR. EIGERMAN: I'm sure I don't. I'm  
22 sure he gave you everything, but we'll look.

23 Q. Have you ever submitted anything in writing to  
24 Herbalife International of America, Inc., with

1           respect to Elena Gouliberenko?

2       A.    Yes.

3       Q.    And did you ever receive a response?

4       A.    Yes.

5       Q.    And what was the response?

6       A.    The response was that she signed the second contract  
7           and that her organization included Elena was  
8           returned to me.

9       Q.    And when did you receive that response?

10      A.    I don't remember exactly.

11      Q.    Was it after July 22, 1997?

12      A.    Yes.

13      Q.    Do you know how soon after July 22, 1997 it was?

14      A.    About six months later.

15                   MS. SANKARAN:   Mark that as the next  
16           exhibit, please

17                                   (Document marked for identification  
18           as Okmyansky Exhibit 24.)

19      Q.    Did you ever submit anything in writing to the  
20           defendant with respect to Elena Artamonova?

21      A.    Yes.

22      Q.    And when did you submit that complaint?

23      A.    I don't remember.

24      Q.    Did you ever receive a response?

1 A. Yes.

2 Q. And when did you receive a response?

3 A. I don't remember.

4 Q. What was the response?

5 A. I don't remember.

6 Q. Did you ever submit anything to the defendant with  
7 respect to he Elvira Tabolova?

8 A. Yes.

9 Q. When did you submit something to Herbalife with  
10 respect to Elvira Tabolova?

11 A. I don't remember.

12 Q. Did you ever receive a response?

13 A. I don't remember.

14 Q. Did you ever submit anything to the defendant in  
15 writing with respect to Igor Averin?

16 A. Yes.

17 Q. When did you submit something to the defendant in  
18 writing with respect to Igor Averin?

19 A. I don't remember.

20 Q. Did you ever submit anything to the defendant in  
21 writing with respect to Pavel Lebedev?

22 A. I don't remember.

23 Q. Did you ever submit anything to the defendant in  
24 writing with respect to Edouard Olevinski?

1 A. I don't remember.

2 Q. Did you ever submit anything in writing to the  
3 defendant Alexander -- I'm sorry -- to the defendant  
4 about Alexander Fedorov?

5 A. I don't remember.

6 Q. Did you ever submit anything in writing to the  
7 defendant about Irina Balabanova?

8 A. I don't remember.

9 Q. Did you ever submit anything in writing to the  
10 defendant about Galina Griboedova?

11 A. I don't remember.

12 Q. Did you ever submit anything to the defendant in  
13 writing about Sergei Vilenski?

14 A. There were no questions. There was no second  
15 contract on his name.

16 MR. BESPALKO: Again, I believe we are  
17 reading from the Statement 26F statement submitted  
18 by the defendant that we have already conceded that  
19 some of the names that made there way into B8 are  
20 not actual -- the claim based people, are just  
21 people who have information in general concerning  
22 this case as we were supposed to give and this was a  
23 mistake of counsel.

24 MS. SANKARAN: Can we go off the record

1           for a minute.

2                               (Discussion off the record.)

3                       MS. SANKARAN:    Back on the record.

4       Q.    Did you ever submit anything in writing to the  
5           defendant with respect to Igor Zamri?

6       A.    I don't remember.

7       Q.    Did you ever submit anything to the defendant in  
8           writing with respect to Denis Guziakov?

9       A.    Not his personal case, but he is included in  
10          Borisova.

11      Q.    Did you ever submit anything in writing -- or strike  
12          that.

13                               Did Miss Borisova receive anything  
14          in response from Herbalife with respect to the case  
15          of Denis Guziakov?

16      A.    There is no separate case for Guziakov.

17      Q.    Did you ever submit anything in writing to the  
18          defendant with respect to Irina Verishko?

19      A.    Just like Guziakov, she's part of Borisova's case.

20      Q.    If you look at Exhibit 3 of all the people that are  
21          in Part B, can you tell me which ones are people who  
22          are the basis of your claim for commissions or  
23          royalties that were paid to people other than you?

24      A.    Number 1 Valentina Borisova, Number 2 Ludmila

1 Mantsysova, Number 3 Dmitri Yurin. Number 4  
2 Svetlana Sokolova, I was already paid for her.  
3 There is no claim there. Number 5 Valery  
4 Novorussov, I'm owed for him. Same for Michail  
5 Archavski. Number 7 Elena Goliberenko, I'm owed.  
6 Number 8 Mikhail Gorbatov, again, I'm owed. Number  
7 9, Olga Zakarikina I'm owed. Number 10 Svetlana  
8 Mirgozodskaya the same. I was paid for 11, 12, 13  
9 and 14. 15, 16, 17 up to 23 I'm not sure. I don't  
10 have enough information from Herbalife. For 24,  
11 money was withdrawn from me, all the calculations  
12 completed.

13 MR. BESPALKO: I believe this means that  
14 there is no claim for Number 24, yes.

15 A. 25 and 26 got their way in this list as witnesses.  
16 27 and 28 are part of Borisova's case.

17 MS. SANKARAN: That's all I have.

18 MR. EIGERMAN: I have a question.

19 CROSS-EXAMINATION

20 BY MR. EIGERMAN:

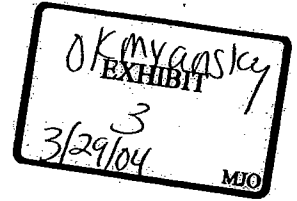
21 Q. Mr. Okmyansky, where does your son live?

22 A. In Boston.

23 Q. In the City of Boston or some other town in Boston?

24 THE WITNESS: In Lincoln.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS



Civil Action No. 03- 10574-JLT

Evgeny Okmyansky,  
Plaintiff,

v.

Herbalife International of  
America, Inc.,  
Defendant

PLAINTIFF'S STATEMENT PURSUANT TO F.R.C.P 26(f)

Now comes the plaintiff, Evgeny Okmyansky, and hereby makes the following mandatory initial disclosure of information pertinent to the case at bar pursuant to Rule 26 of the Federal Rules of Civil Procedure, and Rule 26.1 of the Local Rules of the District Court for the District of Massachusetts:

A. The following is the itemization and computation of the plaintiff's damages:

The plaintiff believes himself entitled to at least \$224,000 with respect to the sales made by Valentina Borisova. This estimate is based on applying the defendant's formula for commissions, royalties, and other payments to the volume figures for Valentina Borisova available to the plaintiff from the documents set forth in paragraph C below.

The plaintiff believes that he is entitled to similar amount of compensation based upon sales volume of at least two other individuals listed in paragraph B below, Mikhail Arshavsky and Valery Novorussov.

The total estimate of the plaintiff's damages at this time approximates \$670,000.

A handwritten signature in black ink, appearing to be 'PS'.

A handwritten signature in black ink, appearing to be 'MJO'.



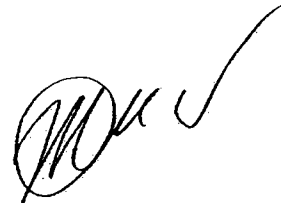
The plaintiff is unable to compute the amount of additional commissions, royalties, and other entitlements because the information necessary to make appropriate computation is solely in the possession and control of the defendant.

B. Names, known addresses and telephone numbers of all persons known or believed to have information pertinent to the case:

a. *The following is a list of persons whose contracts and contributions constitute the bases of the plaintiff's entitlement to commissions, royalties, and other payments from the defendant, which the plaintiff believes the defendant disbursed improperly to persons other than the plaintiff:*

1. Valentina Borisova, Herbalife Complaint No. RSDD00096, ID No. 16-017927, present address unknown, tell 0954489967;
2. Ludmila Mantsysova, Herbalife Complaint No. ISDD000042, ID No. 16-017896, present address and telephone unknown;
3. Dmitri Yurin, ID No. 16-017907, present address and telephone unknown;
4. Svetlana Sokolova, Herbalife Complaint No. RSDD000050, present address and telephone unknown;
5. Valery Novorussov, Herbalife Complaint No. RSD000111, ID No. 16-029309, present address and telephone unknown;
6. Michail Archavski or Arshavsky, Herbalife Complaint No. RSD000107, ID No. 16-029325, last known address 4804 Laurel Canyon Blvs., #810, Valley Village, CA 91607;
7. Elena Goliberenko, Herbalife Complaint No. RSD000102, present address and telephone unknown;

8. Mikhail Gorbatov, Herbalife Complaint No. RSD000101, present address and telephone unknown;
9. Olga Zakarikina, Herbalife Complaint No. RSD000116, ID No. 16-017904, present address and telephone unknown;
10. Svetlana Mirgozodskaya, Herbalife Complaint No. RSD000117, ID No. 16-017918, present address and telephone unknown;
11. Olga Muzalova, Herbalife Complaint No. RSD000097, present address and telephone unknown;
12. Elena Kadisheva, Herbalife Complaint No. RSD000098/ 10-327439, present address and telephone unknown;
13. Valentina Muronov, Herbalife Complaint No. RSD000099, present address and telephone unknown;
14. Kamil Ishkinyaev, Herbalife Complaint No. RSD000100, present address and telephone unknown;
15. Elena Artamonova, Herbalife ID No. 16-509271, present address and telephone unknown;
16. Elvira Tabolova, Herbalife ID No. 10-107686, present address and telephone unknown;
17. Igor Averin, Herbalife ID No. 16-509290, present address and telephone unknown;
18. Pavel Lebedev, Herbalife ID No. 16-509239, present address and telephone unknown;
19. Edouard Olevinski, Herbalife ID No. 10-172717, present address and telephone unknown;



20. Irina Balabanova, Herbalife ID No. 16-509214, Herbalife ID No. 16-509290, present address and telephone unknown;
21. Alexander Fedorov, Herbalife ID No. 10-171056, Herbalife ID No. 16-509290, present address and telephone unknown;
22. Galina Griboedova, Herbalife ID No. 10-172696, present address and telephone unknown;
23. Igor Zamri, Herbalife ID No. 10-172605, present address and telephone unknown;
24. Tatiana Veriaskina, Herbalife ID No. 38-181319, present address and telephone unknown;
25. Sergei Vilenski, Herbalife ID No. 10-10769, present address and telephone unknown;
26. Leon Waisbein, Charmclab member Distributor Herbalife, id 16013444, tel 972 03 5759856
27. GUZIAKOV;DENIS Herbalife ID No. 10304226 tell 0953939732
28. VERISHKO;IRINA Herbalife ID No. 38203117 tell 0959086219

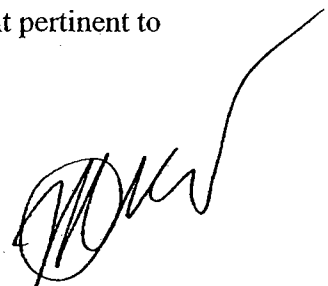
b. *The following persons are believed to have acted on behalf of the defendant in connection with the plaintiff's claims:*

27. Carol Hanna. Upon information and belief, this person is currently employed by the defendant, but otherwise her present address and telephone is unknown to the plaintiff;
28. Jackie Fisher. Upon information and belief, this person is currently employed by the defendant, present address and telephone unknown;

29. Nancy Fleming. Upon information and belief this person is currently or formerly employed by defendant, present address and telephone unknown;
30. Ludmila Fedorovtseva. Upon information and belief this person is currently or formerly employed by defendant, present address and telephone unknown;
31. Nancy Flannagan. Upon information and belief this person is currently or formerly employed by defendant, present address and telephone unknown;
32. Cheryl Smith. Upon information and belief this person is currently or formerly employed by defendant, present address and telephone unknown;
33. Anne O'Halloran. Upon information and belief this person is currently or formerly employed by defendant, present address and telephone unknown;
34. Silvia Ramirez. Upon information and belief this person is currently or formerly employed by defendant, present address and telephone unknown;

C. The following categories of documents are available for inspection and copying at the offices of the plaintiff's counsel at 50 Congress Street, Suite 200, Boston, MA 02109 during reasonable business hours:

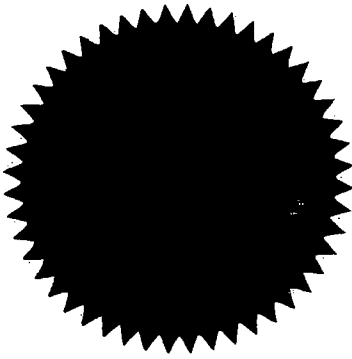
1. Copies of correspondence from plaintiff to defendant pertinent to the claims at issue in this action;




2. Copies of correspondence from defendant to plaintiff pertinent to the claims at issue in this action;
3. Copies of miscellaneous memoranda, notes, and correspondence from third parties to the defendant pertinent to the claims at issue in this action.

**CERTIFICATION**

I, Evgeny Okmyansky, hereby attest under pains and penalties of applicable laws that the information provided above is true and correct to the best of my knowledge at this time.



  
Evgeny Okmyansky

  
Notary public

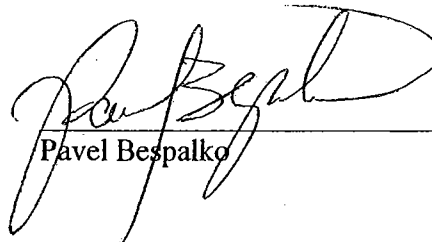
My commission expires N/A

Dated: June 20, 2003

**CERTIFICATE OF SERVICE**

I, Pavel Bespalko, hereby certify that I served the foregoing document upon the defendant by mailing the same via first-class mail, postage pre-paid, to its counsel Paul Greenberg, Esq. of Greenberg & Traurig, at One International Place, Boston, MA 02110 this 20 day of June, 2003.

18<sup>th</sup> day of July 2003

  
Pavel Bespalko



HERBALIFE INTERNATIONAL OF AMERICA, INC.  
9800 La Cienega Blvd. • Inglewood, CA 90301  
(310) 410-9600 • Fax (310) 258-7123

Distributor Policy Administration

Okmyansky  
EXHIBIT  
19  
3/29/04  
MJO

February 9, 1999

Anton Okmianski and Evgeny Okmyansky  
6 Bonvini Drive  
Framingham, MA 01701

Dear Anton and Evgeny,

Carol Hannah has asked that I correspond with in response to your appeal letter regarding Herbalife's resolution of the monetary adjustments on a dual distributorship violation involving Valentina Borisova, File Number RSDD000096. In addition, in various correspondences from you as well as your upline, Leon Waisbein, we have been asked to supply you with information regarding Herbalife's resolution of a number of other cases. I will address each of these matters separately below.

Based on all of the facts of the case involving Valentina Borisova, the resolution was made to transfer the lineage, without monetary adjustments. Part of the basis for this particular resolution is the current and past business situation in Russia, of which I am sure you are aware. The same basis was used in the resolution of the cases of Ludmila Mantsysova, File Number ISDD000042 and Svetlana Sokolova, File Number RSDD000050.

You have also asked about the status of Valery Novorussov, File Number RSDD000111. The file was resolved and the resolution letter was sent on July 30, 1998. The resolution was to move the lineage, without monetary adjustments. The three downline of Valery Novorussov also had dual distributorships. Those cases were resolved prior to the resolution of RSDD000111 and were, therefore, already in the proper lineage.

Other cases you have inquired about are Michael Archavski, File Number RSDD000107, Elena Goliberenko, File Number RSDD000102 and Mikhail Gorbato, File Number RSDD000101. These cases were linked, and have all been resolved. The final letter outlining the resolution to move the lineages was sent July 31, 1998. It was also decided to not do monetary adjustments on these cases.

Finally, the following dual distributorship cases, although decided in your favor, were determined to be uncollectable in regard to the monetary adjustments, due to the inactivity of the original upline:

RSDD000116 Olga Zakarikina  
RSDD000097 Olga Muzalova  
RSDD000099 Valentina Muronov

RSDD000117 Svetlana Mirgozodskaya  
RSDD000098 Elena Kadisheva  
RSDD000100 Kamil Ishkinyev

We appreciate your patience in allowing us the time to fully review all of the information. In regard to your comparison of these cases with other cases, as you know, we review these matters on a case-by-case basis, and must take into consideration all relevant information in each case. While there may be similarities between certain cases, each case is unique, and the resolution is unique based on all the relevant information. In closing, it is our goal to ensure timely communication with our Distributors in the future, and we know we can count on your support.

Sincerely,

Jackie Fisher

Vice President of Distributor Policy Administration  
HERBALIFE INTERNATIONAL OF AMERICA, INC.

cc: Leon Waisbein